

therefore remote. No unusual difficulties are likely to be encountered in the management of this action as a class action.

e. The questions of law and fact common to members of the class predominate over any questions affecting any individual members, because the actions of the defendant complained of herein were generally applicable to and similarly affected the entire class.

26. Among the questions of law and fact involved herein which are common to the class and which predominate over any questions affecting individual members are:

a. whether the defendant charges for calls received by the cellular phones of the plaintiff and the members of the class;

b. whether the defendant rounds the time of each cellular call up to the next whole minute and charges for that increased time;

c. whether the defendant breached its contracts with the plaintiff and the members of the class;

d. whether the defendant violated Section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)).

e. whether the members of the class sustained damages by reason of the foregoing and, if so, the proper measure of those damages.

COUNT I

(For Breach of Contract)

27. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 26 above as if fully set forth herein.

28. The defendant sold cellular services to the plaintiff and the members of the class pursuant to the Terms and Conditions set forth in the written Contract between the defendant and each class member.

29. The defendant had a contractual duty to plaintiff and the class to charge them for cellular services only in accordance with the terms set forth in its contracts with the plaintiff and the members of the class, including but not limited to:

a. only charging them for time related to calls originated by their cellular phones (and hence not charging them for time related to calls received by their cellular phones); and

b. only charging them for Chargeable Time, as that term is defined in the Contract (and hence not rounding the time related to each call up to the next whole minute).

30. Defendant breached its contracts with the plaintiff and the members of the class by:

a. charging them for the time associated with calls received by their cellular telephones;

b. increasing the time of each call by rounding the Chargeable Time of each call up to the next whole minute, and charging the plaintiff and the members of the class for that increased amount of time.

31. As a result of defendant's breach of contract, the plaintiff and the members of the class have been damaged in an amount to be determined at trial.

32. By reason of the foregoing, defendant is liable to plaintiff and the members of the class for damages in an amount to be determined at trial.

COUNT II

(Violation of Section 201 (b) of the  
Communications Act of 1934 (47 U.S.C. § 201 (b))

33. The plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 32 above as if fully set forth herein.

34. The defendant, in providing cellular service for profit to the plaintiff and the class, is a provider of commercial mobile service as defined in Section 332(d)(1) of the Communications Act (47 U.S.C. § 332(d)(1)).

35. The defendant, as a person engaged in providing commercial mobile service, is treated as a common carrier for the purposes of Chapter 5 of Title 47, pursuant to Section 332(c)(1)(A) of the Communications Act (47 U.S.C. § 332(c)(1)(A)).

36. The defendant's conduct constitutes unjust practices in violation of Section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)).

37. As a result of defendant's violations of section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)), the plaintiff and the members of the class have been damaged in an amount to be determined at trial.

38. By reason of the foregoing, defendant is liable to the plaintiff and the members of the class for damages pursuant to section 206 of the Communications Act (47 U.S.C. § 206) in an amount to be determined at trial.

COUNT III

(Violation of M.G.L. Ch. 93A, Section 2(a))

39. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 38 above as if fully set forth herein.

40. Defendant is engaged in trade and commerce, as that term is defined in M.G.L. Ch. 93A, Sec. 1(b).

41. The defendant's conduct constitutes willful and knowing unfair and deceptive trade practices in violation of M.G.L. Chapter 93A, § 2(a).

42. Pursuant to M.G.L. Chapter 93A, § 9(3), on July 18, 1996, plaintiff, through her counsel, wrote a letter to defendant on behalf of the plaintiff and the class, demanding relief from, and a cessation of its violations of, M.G.L. Chapter 93A, § 2(a). The defendant has failed to make a reasonable offer of settlement in response to that demand letter. The defendant's refusal to grant the plaintiff and the class reasonable relief was made in bad

faith, with knowledge or reason to know that the acts or practices complained of violated M.G.L. Ch. 93A, § 2(a).

43. As a result of defendant's violation of M.G.L. Chapter 93A, § 2(a), plaintiff and the members of the class have been damaged in an amount to be determined at trial.

44. By reason of the foregoing, defendant is liable to plaintiff and the class for damages in an amount to be determined at trial, tripled, plus her reasonable attorney's fees and costs.

WHEREFORE, the Plaintiff, on her own behalf and on behalf of the members of the Class, prays for judgment as follows:

A. Declaring this action to be a class action properly maintained pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure;

B. Declaring that pursuant to the contracts which the defendant has entered into with the plaintiff and the members of the class, the defendant may not:

i. charge the plaintiff and the members of the class for the time associated with calls received on their cellular phones; or

ii. round up the Chargeable Time for each call to the next whole minute and charge the plaintiff and the members of the class for the increased time resulting from that rounding up;

C. Enjoining the defendant from:

i. charging the plaintiff and the members of the class for the time associated with calls received on their cellular phones; and

ii. rounding up the Chargeable Time for each call to the next whole minute and charging the plaintiff and the members of the class for the increased time resulting from that rounding up;

D. Awarding damages to the plaintiff and the members of the Class, with prejudgment interest;

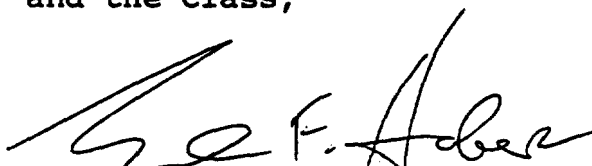
E. Awarding the plaintiff and the members of the Class triple their damages pursuant to M.G.L. Chapter 93A, Sections 9 and 11;

F. Awarding the Plaintiff and the members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

G. Awarding the Plaintiff and the members of the Class such other and further relief as may be just and proper under the circumstances.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

Submitted by the attorneys for  
the Plaintiff, Jill Ann Smilow,  
and the Class,

A handwritten signature in black ink, appearing to read "E. F. Haber", is written over a horizontal line.

Edward F. Haber; BBO No. 215620  
Thomas G. Shapiro; BBO No. 454680  
Thomas V. Urmey, Jr.; BBO No. 506620  
Andrew Rainer; BBO No. 542067  
Shapiro Haber & Urmey LLP  
75 State Street  
Boston, MA 02109  
(617) 439-3939

Dated: February 11, 1997

DATE 12-3-95

## Retail Customer Service Request

CELLULARONE

|                            |                |
|----------------------------|----------------|
| CELLULAR NUMBER <u>350</u> | ACCOUNT NUMBER |
| <u>(617) 1935-4738</u>     |                |

## INDIVIDUAL

|                                                         |                                       |                          |                                                       |  |  |
|---------------------------------------------------------|---------------------------------------|--------------------------|-------------------------------------------------------|--|--|
| PARTY RESPONSIBLE FOR PAYMENT                           |                                       |                          | MAILING ADDRESS (If Different From Party Responsible) |  |  |
| Name (As Appears on Photo ID)<br><u>Jill Ann Smilow</u> |                                       |                          | Name                                                  |  |  |
| Street Address (No P.O. Box)<br><u>59 Ward St</u>       |                                       |                          | c/o Name (Business or Individual Name)                |  |  |
| City<br><u>Lexington</u>                                | State<br><u>MA</u>                    | Zip Code<br><u>02173</u> | Street Address                                        |  |  |
| Home Phone<br><u>617 862-4152</u>                       | Business Phone<br><u>617 423-2200</u> |                          | City                                                  |  |  |
| Previous Address (If Less Than 2 Years)                 |                                       |                          | State                                                 |  |  |
|                                                         |                                       |                          | Zip Code                                              |  |  |
|                                                         |                                       |                          | New Activation <input type="checkbox"/>               |  |  |
|                                                         |                                       |                          | Add To Existing Account Number                        |  |  |

|                               |                                              |                                    |                            |
|-------------------------------|----------------------------------------------|------------------------------------|----------------------------|
| CREDIT INFORMATION            |                                              |                                    |                            |
| Birth Date<br><u>04/24/62</u> | Social Security Number<br><u>011-38-9272</u> | Employer<br><u>Med-o-lark Camp</u> | Years Employed<br><u>1</u> |

## BUSINESS

|                               |  |                       |  |
|-------------------------------|--|-----------------------|--|
| PARTY RESPONSIBLE FOR PAYMENT |  | USER INFORMATION      |  |
| Company Name                  |  | Name                  |  |
| Attention: Title              |  | Street Address        |  |
| ite/Floor                     |  | City                  |  |
| Street Address (No P.O. Box)  |  | State                 |  |
| City                          |  | Zip Code              |  |
| Business Phone                |  | Business Phone        |  |
| ( )                           |  | ( )                   |  |
|                               |  | Home Phone            |  |
|                               |  | ( )                   |  |
| CREDIT INFORMATION            |  |                       |  |
| Type of Business              |  | Federal Tax ID Number |  |

|                                        |                              |                                  |          |                             |
|----------------------------------------|------------------------------|----------------------------------|----------|-----------------------------|
| SALES/CELLULAR INFORMATION             |                              |                                  |          |                             |
| Sales Person<br><u>C. B. ...</u>       | Major Account Code           | Lead Number                      | SIC Code | Dealer Code<br><u>BTS18</u> |
| Authorization Number<br><u>0866586</u> | Security Deposit<br><u>0</u> | (Circle Type) Amex Visa M/C Disc |          |                             |
|                                        |                              | Credit Card #                    |          |                             |

|                                          |                                                                                                                                                                                                                                                              |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Customer Signature<br><u>[Signature]</u> | I authorize Cellular One to check credit and understand that continued cellular service is subject to credit approval or a refundable security deposit. I acknowledge that I have read and understand all of the terms and conditions on the FRONT AND BACK. |
| Photo ID Required                        | License #                                                                                                                                                                                                                                                    |
| State                                    | Exp. Date                                                                                                                                                                                                                                                    |

|                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| SERVICE INFORMATION                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                               |
| Activation Date<br><u>12-31-95</u>                                                                                                                                                                                                                                                                                         | ESN/MSN<br><u>15602902841</u>                                                                                                                                                                                                | Model<br><u>LY12C</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Type (M, T, or P)<br><u>T</u> |
| Rate Plan<br><u>ATGTF</u>                                                                                                                                                                                                                                                                                                  | SERVICE COMMITMENT                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                               |
| Activation Fee \$40.00. You have the option of paying this fee in \$10.00 increments over four months. Initials<br>If you do not select this option, the total fee will be charged to your first bill. Appropriate local telephone company, long distance and roaming charges apply.<br>Amer administration fee \$4.00/mo. | Your Choice Rate Plan requires a one (1) year service commitment, which will be automatically renewed. Early termination of your Choice Rate Plan will result in a \$150.00 cancellation fee.<br>Initials <u>[Signature]</u> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                               |
| Detailed Billing<br><u>3</u> or N<br>\$1.00 Charge                                                                                                                                                                                                                                                                         | Unlock Code<br><u>4738</u>                                                                                                                                                                                                   | As an Equal Access provider, CI will make every effort to ensure your cellular phone is connected to the long distance carrier of your choice. In the event your cellular phone is inadvertently connected to a different long distance service, CI will be liable only to the extent of connecting your cellular service to your chosen long distance carrier at the earliest opportunity after you notify CI. CI will not be responsible for any charges incurred by you with another long distance carrier or any other charges. Further, CI will release your billing name, address, mobile number and the telephone numbers where you can be reached to your chosen long distance carrier. |                               |
| Long Distance Carrier<br><u>A</u>                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                               |
| Features/Call Restrictions <input type="checkbox"/> No Answer Xfer <input type="checkbox"/> Call Fwd <input type="checkbox"/> 3 Party Conf <input type="checkbox"/> Out-Going Only <input type="checkbox"/> In-Come Only <input type="checkbox"/> Local Only                                                               |                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                               |

# TERMS AND CONDITIONS

summarizes the terms and conditions of the agreement between Customer and Cellular. Either the Customer's signature, the use of the service or payment for the service constitutes acceptance of these terms and conditions by Customer. Notwithstanding the provisions of any other agreement which are inconsistent with this agreement these conditions constitute the entire agreement between the parties.

Customer with cellular telephone service (the "Service") and Customer agrees that the Service and all other charges on the terms and conditions herein. This undertaking is based on the Company's ability to obtain, retain, and maintain without unreasonable effort the facilities, licenses, and rights required for the construction and operation of the Service. Directory listing(s), operator-assisted services, and other services provided by other carriers are subject to the rules, regulations, charges, and rates of the carrier providing such service, and are to be billed directly by the carrier for such service. C1 shall make reasonable efforts to provide continuous, errorless and uninterrupted Service to Customer. However, Customer expressly acknowledges and agrees that the Service and obligation of C1 to Customer under this contract or otherwise is strictly limited. In no event shall the Company be liable for: any action or omission of the provider of non-C1 facilities providing Cellular Service; interruptions, errors, delays, or defects in transmission, or in the receipt, whether caused by acts of God, fire, war, riots, Government authorities, or any other cause beyond C1's control; any defacement or damage to any Customer's vehicle or other vehicle or property resulting from the existence of a cellular telephone in any vehicle or property; any damages or any injury caused by the presence or use of the Cellular Service or the cellular telephone; or any suspension or termination of Cellular Service by C1 for any term or condition by Customer, including nonpayment of any sum due. In no event shall C1's obligation or liability, if any, extend to direct, indirect, punitive, special, incidental or consequential losses or damages Customer may suffer or incur such as, but not limited to, loss of profits, damages or losses as a result of Customer's inability to fulfill contracts for goods, claims of personal injuries, injury to good will, claims of customers and the like, nor shall C1 be liable for damages or losses Customer may suffer or incur as a result of claims, suits or proceedings made or instituted against Customer by third parties, whether public or private.

The sole liability of C1 for loss or damages arising out of mistakes, omissions, errors, delays, errors, or defects in the Cellular Services, the transmission thereof or defects in the facilities shall in no event exceed an amount equivalent to the base rate charge for each separately disrupted service.

Customer is contracted to have service for the term specified on the front of this Contract under the Service Commitment. The term of your Service Commitment begins with the first service is activated. At the end of a Service Commitment, this Contract shall be automatically renewed on the same terms and conditions contained herein for a subsequent Service Commitment of equal length, and shall continue to be automatically renewed until terminated by either party as provided herein. You may terminate service at the end of a Service Commitment without breach by notifying C1 of your decision 14 days before or after the end of the Service Commitment. Any other termination by you during the initial Service Commitment or any subsequent term is a material breach of this Contract. If you breach this contract, you agree to pay C1 damages and agree that C1's damages arising out of your breach will be difficult if not impossible to determine. Therefore, if you materially breach this Contract, you agree to pay early termination charges as liquidated damages in the amount of \$150.00. C1 shall release, defend and hold C1, its officers, employees and agents harmless from and against any and all claims, action or liabilities arising in any way directly or indirectly in connection with this contract or Customer's use of the Service. This indemnity shall survive the termination of this contract.

The price of the Service does not include sales, use, excise, ad valorem, property or any other taxes which may be hereafter imposed, directly or indirectly, by any governmental authority with respect to the Service. Customer shall pay such taxes directly or reimburse C1 for such taxes which C1 may be required to collect or pay immediately upon the invoicing of the Service.

Customer has no property right in the cellular number assigned to Customer's cellular radio equipment (the "Equipment") and none can be acquired by usage or otherwise. C1 reserves the right to assign, designate or change such number when, in its sole opinion, such assignment, designation or change is reasonably necessary in the conduct of its business. C1 shall be liable or responsible under this contract or otherwise for the installation, operation, maintenance, repair, maintenance or any other aspect of Customer's Equipment. C1 shall provide and maintain all required Equipment and insure that it is technically and functionally compatible with and shall not interfere with the Service, and shall be in compliance with all applicable Federal Communications Commission, state or other governmental authority laws, rules and regulations.

Customer hereby acknowledges that payment for the service is due in accordance with the terms as specified on the invoice. Late payments shall be subject to a late payment charge as specified on the invoice. Any of the following events shall constitute default by Customer hereunder: (a) Customer fails to pay C1 any amount due; (b) Customer suspends service, becomes bankrupt or insolvent or the subject of a petition in bankruptcy; (c) Customer violates the rules and regulations regarding the Service as may be required by any governmental authority having jurisdiction; (d) C1 has reasonable cause to believe that the telephone operating on C1's facilities has been cloned or is otherwise operating illegally, suspend service to the offending Customer without advance notice or (e) Customer fails to comply with any provision of this contract. Upon the occurrence of any such event of default, C1 may, in its sole discretion, without incurring any liability to Customer, (a) terminate this contract; (b) cause the Service to be temporarily or permanently discontinued; (c) declare due the all amounts owed to C1 by Customer hereunder or otherwise; or (d) pursue any other legal action at law or in equity. All rights and remedies granted to C1 are cumulative, and C1's failure to exercise any right or remedy shall not constitute a waiver of such right of remedy or of any

future default by Customer. In the event that the Service to Customer is discontinued due to Customer's default, Customer may be charged a reconnection charge. The Service may be discontinued by C1 for any reason without C1 giving notice of its intention to discontinue the Service.

8. Customer acknowledges and agrees that the Service is not a "good" within the meaning of the Uniform Commercial Code. Without limitation of the foregoing, C1 makes no warranty whatsoever, whether express, implied or statutory, whether written or oral, and whether relating to merchantability or fitness for a particular purpose, with respect to this contract or the Service.

9. Customer shall pay to C1 all costs and expenses including without limitation, reasonable attorney's fees, and the fees of any collection agencies and court costs incurred by C1 in exercising any of its rights or remedies when enforcing any of the terms, conditions or provisions hereof.

10. C1 reserves the right in its sole discretion to modify these terms and conditions of Service at any time with thirty (30) days prior notice and Customer agrees to be bound thereby.

11. C1 is authorized to check Customer's credit history and to answer questions about credit experience, if any, with Customer. Customer consents to C1's disclosure of account information to or from credit reporting agencies, credit bureaus, private credit reporting associations, or to or from other providers of cellular service at any time during Customer's service with C1.

12. Except as otherwise provided, no modification hereof shall be binding upon either party unless the modification is in writing and signed by a duly authorized representative of both parties. No provision of this contract which may be deemed unenforceable shall in any way invalidate any other provision of this contract, all of which shall remain in full force and effect. This contract shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legatees, successors and approved assigns, except Customer may not assign this contract. This contract shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts. All notices hereunder shall be in writing and shall be delivered personally or mailed to the other party at the address shown herein or such other address as may be designated in writing by such party, and shall be deemed given when so delivered or mailed.

13. Chargeable time for calls originated by a Mobile Subscriber Unit starts when the Mobile Subscriber Unit signals call initiation to C1's facilities and ends when the Mobile Subscriber Unit signals call disconnect to C1's facilities and the call disconnect signal has been confirmed. Chargeable time may include time for the cellular system to recognize that only one party has disconnected from the call, and may also include time to clear the channels in use.

14. Customer agrees that C1 may, at its sole option, keep a facsimile signature as an original, retain this agreement, any documents or other information relating to Customer's relationship with C1 in electronic, optical, microfiche or other form of data storage, and that a reproduction or other copy of such documents shall be considered an original copy for all purposes.

15. If you receive a promotional benefit at the time of activation, you agree to remain on your initial rate plan for 120 days. If you disconnect or change rate plans within the first 120 days of your service commitment, you will be charged back the total cost of the promotional benefit.

16. Service may be temporarily interrupted when, in the sole discretion of C1, it is necessary to perform repairs, relocation or similar activities as are required for proper operation of the C1's facilities. Credits for interruption of Cellular Service will only be provided to the extent said interruption is continuous and exceeds twenty-four (24) hours. If service is interrupted due to the failure of the entire cellular system, Customer will receive a credit in the form of a pro-rata adjustment of the recurring subscription fee for the service rendered unusable by the interruption. Since C1 cannot independently determine when and where interruptions of service have occurred, due to failures of less than the entire system, credits in the form of a pro-rata adjustment of the base rate will be given under these circumstances only when Customer reports interruptions. For the purpose of calculating the applicable credit, any such interruption will be measured from the time it is reported to or detected by C1, whichever occurs first. This paragraph shall not apply to interruptions of service due to the negligence or willful act of the Customer. The issuance of the pro-rata credit, shall constitute a full accord and satisfaction of all claims by the Customer against the C1 for said interruption of service. In no case will a pro-rata credit exceed the monthly base rate.

17. C1 will recognize written or oral orders from Customer in processing of requests for service, change in service, or discontinuation of service.

18. Service shall not be used in the commission of any unlawful act, nor shall it be used in the impersonation of another person with fraudulent or malicious intent, or to call another person so frequently or at such times of the day, or in any other manner so as to annoy, abuse, threaten, or harass the called party. Service shall not be used in a manner so as to unreasonably interfere with the use of this service by other Users.

19. C1 may, in its sole discretion to safeguard its interests, require Customer to make a suitable deposit as a security for the payment of invoices for services rendered. Simple interest will be credited to the deposit for the period during which it is held by C1. The fact that a deposit has been placed with C1 neither relieves Customer from the prompt payment of bills nor constitutes a waiver or modification of the terms providing for the discontinuance of service for nonpayment of any sums due C1. The amount of a deposit that will be required shall be determined by C1. In the event that C1 determines that the deposit is inadequate, C1 may require the amount to be increased to a higher amount. C1 will refund a deposit and its accrued interest before the end of twelve months if satisfactory credit has been achieved or upon termination of service. If service is terminated before the end of twelve months, the amount of such deposit will be credited to the Customer's final bill and a credit balance, if any, will be refunded.

## TERMS AND CONDITIONS

This summarizes the terms and conditions of the agreement between Customer and Cellular ("C1"). Either the Customer's signature, the use of the service or payment for the service shall constitute acceptance of these terms and conditions by Customer. Notwithstanding the terms and provisions of any other agreement which are inconsistent with this agreement these terms and conditions constitute the entire agreement between the parties.

C1 will provide Customer with cellular telephone service (the "Service") and Customer agrees to pay for the Service and all other charges on the terms and conditions herein. This undertaking is dependent on the Company's ability to obtain, retain, and maintain without unreasonable expense the facilities, licenses, and rights required for the construction and operation of the network required to provide Cellular Service. Directory listing(s), operator-assisted services, and other similar services provided by other carriers are subject to the rules, regulations, charges, and tariffs of the carrier providing such service, and are to be billed directly by the carrier providing such service. C1 shall make reasonable efforts to provide continuous, errorless and uninterrupted Service to Customer, however, Customer expressly acknowledges and agrees that the liability and obligation of C1 to Customer under this contract or otherwise is strictly limited. In no event shall the Company be liable for: any act or omission of the provider of non-C1 facilities used in providing Cellular Service; interruptions, errors, delays, or defects in transmission, or failure to transmit, whether caused by acts of God, fire, war, riots, Government authorities, or any other cause in or beyond C1's control; any defacement or damage to any Customer's vehicle or any other vehicle or property resulting from the existence of a cellular telephone in any vehicle on any property; any damages or any injury caused by the presence or use of the Cellular Services or the cellular telephone; or any suspension or termination of Cellular Service by C1 for violation of any term or condition by Customer, including nonpayment of any sum due. In no event shall C1's obligation or liability, if any, extend to direct, indirect, punitive, special, incidental consequential losses or damages Customer may suffer or incur such as, but not limited to, loss of revenue or profits, damages or losses as a result of Customer's inability to fulfill contracts for third parties, claims of personal injuries, injury to good will, claims of customers and the like, nor shall it extend to damages or losses Customer may suffer or incur as a result of claims, suits or other proceedings made or instituted against Customer by third parties, whether public or private in nature. The sole liability of C1 for loss or damages arising out of mistakes, omissions, interruptions, delays, errors, or defects in the Cellular Services, the transmission thereof or failures or defects in the facilities shall in no event exceed an amount equivalent to the proportionate charge for each separately disrupted service.

You have contracted to have service for the term specified on the front of this Contract under the heading of Service Commitment. The term of your Service Commitment begins with the first day your service is activated. At the end of a Service Commitment, this Contract shall be automatically renewed on the same terms and conditions contained herein for a subsequent Service Commitment of equal length, and shall continue to be automatically renewed until terminated by either party as provided herein. You may terminate service at the end of a Service Commitment without breach by notifying C1 of your decision 14 days before or after the automatic renewal. Any other termination by you during the initial Service Commitment or any renewal term is a material breach of this Contract. If you breach this contract, you agree to pay C1 for its losses and agree that C1's damages arising out of your breach will be difficult if not impossible to determine. Therefore, if you materially breach this Contract, you agree to pay early termination charges as liquidated damages in the amount of \$150.00.

Customer shall release, defend and hold C1, its officers, employees and agents harmless from and against any and all claims, action or liabilities arising in any way directly or indirectly in connection with this contract or Customer's use of the Service. This indemnity shall survive termination of this contract.

The price of the Service does not include sales, use, excise, ad valorem, property or any other tax now or which may be hereafter imposed, directly or indirectly, by any governmental authority or agency with respect to the Service. Customer shall pay such taxes directly or reimburse C1 for any such taxes which C1 may be required to collect or pay immediately upon the invoicing of any such taxes.

future default by Customer. In the event of Customer's default, Customer's service shall be discontinued by C1 for all purposes of the Service.

8. Customer acknowledges that the Service is provided on a "best effort" basis, and that C1 makes no warranty, express or implied, as to the merchantability or fitness of the Service for any particular purpose.

9. Customer shall pay to C1 all charges, including attorney's fees, and the cost of collection, for exercising any of its rights hereunder.

10. C1 reserves the right to terminate the Service at any time with thirty (30) days notice.

11. C1 is authorized to disclose to or from credit reporting agencies information from other providers of cellular service.

12. Except as otherwise provided in writing by the parties, no provision of this contract shall be invalidated by the death, disability, or insolvency of either party. This contract shall be binding on the heirs, legatees, successors, and assigns of the parties. This contract shall constitute the entire agreement between the parties. This contract shall be delivered personally or by registered mail to the address as may be designated by the parties.

13. Chargeable time for a Subscriber Unit signals or signals call disconnect to C1. Chargeable time may include time disconnected from the call.

14. Customer agrees that this agreement, and all amendments thereto, shall be in electronic, optical, or written form, and a copy of such documents shall be maintained by C1.

15. If you receive a promotional rate plan for 180 days, you agree to maintain your service commitment.

16. Service may be temporarily interrupted for repairs, relocation, or other reasons. Credits for interruption of service are provided for the entire duration of the interruption. Since C1 cannot independently verify the occurrence of interruptions, due to failures or adjustments of the base station, the provisions of this paragraph shall not apply to interruptions. For the purposes of this paragraph, the time measured from the time of interruption shall not apply.

6. Customer has no property right in the cellular number assigned to Customer's cellular radio telephone equipment (the "Equipment") and none can be acquired by usage or otherwise. C1 reserves the right to assign, designate or change such number when, in its sole opinion, such assignment, designation or change is reasonably necessary in the conduct of its business. C1 shall not be liable or responsible under this contract or otherwise for the installation, operation, quality of transmission, repair, maintenance or any other aspect of Customer's Equipment. Customer shall provide and maintain all required Equipment and insure that it is technically and operationally compatible with and shall not interfere with the Service, and shall be in compliance with applicable Federal Communications Commission, state or other governmental authority laws, rules and regulations.

7. Customer hereby acknowledges that payment for the service is due in accordance with the payment terms as specified on the invoice. Late payments shall be subject to a late payment charge as specified on the invoice. Any of the following events shall constitute default by Customer hereunder; (a) Customer fails to pay C1 any amount due; (b) Customer suspends business, becomes bankrupt or insolvent or the subject of a petition in bankruptcy; (c) Customer fails to comply with the rules and regulations regarding the Service as may be required by any governmental authority having jurisdiction; (d) C1 has reasonable cause to believe that the cellular telephone operating on C1's facilities has been cloned or is otherwise operating fraudulently, suspend service to the offending Customer without advance notice or (e) Customer fails to comply with any provision of this contract. Upon the occurrence of any such event of default, C1 may, in its sole discretion, without incurring any liability to Customer, (a) terminate this contract; (b) cause the Service to be temporarily or permanently discontinued; (c) declare due the sum of all amounts owed to C1 by Customer hereunder or otherwise; or (d) pursue any other remedy at law or in equity. All rights and remedies granted to C1 are cumulative, and C1's failure to exercise any right or remedy shall not constitute a waiver of such right of remedy or of any

Customer. The issuance of claims by the Customer against C1 shall not exceed the monthly base rate. C1 will recognize written change in service, or discontinuance of service. Service shall not be used for impersonation of another person or for the purpose of harassing or annoying any person frequently or at such times or in such a manner as to harass the called party. Service with the use of this service by C1 may, in its sole discretion, require a deposit as a security for the payment of bills. The deposit shall be credited to the deposit for the payment of bills. C1 may, in its sole discretion, place with C1 neither a waiver or modification of the terms of this contract for any sums due C1. The amount of the deposit shall be determined by C1. The event that C1 determines the deposit to be increased to a higher amount, C1 may, in its sole discretion, terminate the service twelve months if satisfactory payment is not received. C1's final bill and a credit statement shall be issued to the Customer.

## TERMS AND CONDITIONS

er and Cellular  
or the service  
standing the  
reement these

ustomer agrees  
This undertaking  
reasonable  
ation of the  
ed services, and  
ons, charges,  
e carrier  
errorless and  
and agrees that  
trictly limited. In  
non-C1 facilities  
mission, or  
authorities, or any  
ner's vehicle or  
e in any vehicle  
the Cellular  
ervice by C1 for  
due. In no  
er incidental  
ot insured to, loss  
ll contracts for  
nd the like, nor  
laims, suits or  
ublic or private  
ssions,  
hereof or  
o the

contract under  
s with the first  
shall be  
ubsequent  
ed until  
nd of a Service  
er the  
ment or any  
agree to pay  
fficult if not  
ee to pay early

harmless from  
irectly in  
all survive  
ty any other  
ent authority  
imburse C1  
ne invoicing of

ellular radio  
ervice. C1  
inion, such

future default by Customer. In the event that the Service to Customer is discontinued due to Customer's default, Customer may be charged a reconnection charge. The Service may be discontinued by C1 for any reason without C1 giving notice of its intention to discontinue the Service.

8. Customer acknowledges and agrees that the Service is not a "good" within the meaning of the Uniform Commercial Code. Without limitation of the foregoing, C1 makes no warranty whatsoever, whether express, implied or statutory, whether written or oral, and whether relating to merchantability or fitness for a particular purpose, with respect to this contract or the Service.

9. Customer shall pay to C1 all costs and expenses including without limitation, reasonable attorney's fees, and the fees of any collection agencies and court costs incurred by C1 in exercising any of its rights or remedies when enforcing any of the terms, conditions, or provisions hereof.

10. C1 reserves the right in its sole discretion to modify these terms and conditions of Service at any time with thirty (30) days prior notice and Customer agrees to be bound thereby.

11. C1 is authorized to check Customer's credit history and to answer questions about credit experience, if any, with Customer. Customer consents to C1's disclosure of account information to or from credit reporting agencies, credit bureaus, private credit reporting associations, or to or from other providers of cellular service at any time during Customer's service with C1.

12. Except as otherwise provided, no modification hereof shall be binding upon either party unless the modification is in writing and signed by a duly authorized representative of both parties. No provision of this contract which may be deemed unenforceable shall in any way invalidate any other provision of this contract, all of which shall remain in full force and effect. This contract shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legatees, successors and approved assigns, except Customer may not assign this contract. This contract shall be construed in accordance with and governed by the laws of the Commonwealth of Massachusetts. All notices hereunder shall be in writing and shall be delivered personally or mailed to the other party at the address shown herein or such other address as may be designated in writing by such party, and shall be deemed given when so delivered or mailed.

13. Chargeable time for calls originated by a Mobile Subscriber Unit starts when the Mobile Subscriber Unit signals call initiation to C1's facilities and ends when the Mobile Subscriber Unit signals call disconnect to C1's facilities and the call disconnect signal has been confirmed. Chargeable time may include time for the cellular system to recognize that only one party has disconnected from the call, and may also include time to clear the channels in use.

14. Customer agrees that C1 may, at its sole option, keep a facsimile signature as an original, retain this agreement, any documents or other information relating to Customer's relationship with C1 in electronic, optical, microfiche or other form of data storage, and that a reproduction or other copy of such documents shall be considered an original copy for all purposes.

15. If you receive a promotional benefit at the time of activation, you agree to remain on your initial rate plan for 180 days. If you disconnect or change rate plans within the first 180 days of your service commitment, you will be charged back the total cost of the promotional benefit.

16. Service may be temporarily interrupted when, in the sole discretion of C1, it is necessary to perform repairs, relocation or similar activities as are required for proper operation of the C1's facilities. Credits for interruption of Cellular Service will only be provided to the extent said interruption is continuous and exceeds twenty-four (24) hours. If service is interrupted due to the failure of the entire cellular system, Customer will receive a credit in the form of a pro-rata adjustment of the recurring subscription fee for the service rendered unusable by the interruption. Since C1 cannot independently determine when and where interruptions of service have occurred, due to failures of less than the entire system, credits in the form of a pro-rata adjustment of the base rate will be given under these circumstances only when Customer reports interruptions. For the purpose of calculating the applicable credit, any such interruption will be measured from the time it is reported to or detected by C1, whichever occurs first. This paragraph shall not apply to interruptions of service due to the negligence or willful act of the Customer. The issuance of the pro-rata credit, shall constitute a full accord and satisfaction of all claims by the Customer against the C1 for said interruption of service. In no case will a pro-rata credit exceed the monthly base rate.

business. C1  
operation,  
ment.  
nically and  
compliance  
authority laws,

with the  
payment  
It by  
spends  
) Customer  
ed by any  
at  
ng  
) Customer  
event of  
terminate this  
clare due the  
ny other  
C1's failure  
of any

17. C1 will recognize written or oral orders from Customer in processing of requests for service, change in service, or discontinuation of service.

18. Service shall not be used in the commission of any unlawful act, nor shall it be used in the impersonation of another person with fraudulent or malicious intent, or to call another person so frequently or at such times of the day, or in any other manner so as to annoy, abuse, threaten, or harass the called party. Service shall not be used in a manner so as to unreasonably interfere with the use of this service by other Users.

19. C1 may, in its sole discretion to safeguard its interests, require Customer to make a suitable deposit as a security for the payment of invoices for services rendered. Simple interest will be credited to the deposit for the period during which it is held by C1. The fact that a deposit has been placed with C1 neither relieves Customer from the prompt payment of bills nor constitutes a waiver or modification of the terms providing for the discontinuance of service for nonpayment of any sums due C1. The amount of a deposit that will be required shall be determined by C1. In the event that C1 determines that the deposit is inadequate, C1 may require the amount to be increased to a higher amount. C1 will refund a deposit and its accrued interest before the end of twelve months if satisfactory credit has been achieved or upon termination of service. If service is terminated before the end of twelve months, the amount of such deposit will be credited to the Customer's final bill and a credit balance, if any, will be refunded.

RECEIVED  
A  
SUMMER  
1994  
1366  
4  
2/11/94  
Date

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JILL ANN SMILOW, On Her Behalf  
And On Behalf Of All Others  
Similarly Situated,

Plaintiff,

VS.

SOUTHWESTERN BELL MOBILE  
SYSTEMS, INC., Doing Business  
As Cellular One,

Defendant.

97-10000-1

Civil Action No.

PLAINTIFF DEMANDS A  
TRIAL BY JURY

CLASS ACTION COMPLAINT

Plaintiff alleges upon knowledge with respect to herself and her own acts and upon information and belief as to the other allegations, based upon the investigation of her attorneys:

I. INTRODUCTION

1. This is a class action brought by the plaintiff on her own behalf and on behalf of all other similarly situated persons and entities in the United States which purchased cellular telephone services from the defendant Southwestern Bell Mobile Systems, Inc.

2. The plaintiff brings this action against the defendant for overcharging the plaintiff and the members of the class for cellular telephone service. In doing so, the defendant breached its written contracts with the plaintiff and the members of the

7. The defendant Southwestern Bell Mobile Systems, Inc., is a corporation organized under the laws of both the State of Delaware and the State of Virginia. It is a wholly owned subsidiary of SBC Communications Inc., which until April, 1995 was known as Southwestern Bell Corporation.

8. The defendant is in the business of selling cellular services in many cities in Massachusetts and in many other states throughout the United States. It has offices in Boston and other cities in the Commonwealth of Massachusetts.

9. The defendant conducts its cellular business in Massachusetts and in all other states in which it operates, other than Texas, Missouri, Oklahoma, Kansas and Arkansas, under the trade name "Cellular One," a service mark which is owned by Cellular One Group, which is a partnership in which the defendant, or an affiliate of the defendant, has an ownership interest.

10. The defendant is one of the largest providers of cellular telephone services in the United States. It sells cellular services in at least 35 metropolitan markets, including Boston, Massachusetts; Washington, D.C.; Chicago, Illinois; St. Louis, Missouri; and Dallas-Ft. Worth, Texas, which are 5 of the 15 largest metropolitan markets in the United States and in at

class and violated Section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)) and M.G.L. Ch. 93A, section 2(a).

## II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to section 207 of the Communications Act of 1934 (the "Communications Act") (47 U.S.C. § 207) and 18 U.S.C. §§ 1331 and 1367.

4. The claims asserted herein arise under Sections 201, 206 and 207 of the Communications Act (47 U.S.C. §§ 201, 206 and 207), Massachusetts General Laws, Chapter 93A, § 2(a) and the common law.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the defendant corporation resides in the Commonwealth of Massachusetts and because a substantial part of the events and omissions giving rise to the claims occurred in this District.

## III. PARTIES

6. Plaintiff Jill Ann Smilow is a natural person who resides in Lexington (Middlesex County) Massachusetts. On December 31, 1995, she entered into a contract for cellular telephone service with the defendant Southwestern Bell Mobile Systems, Inc., doing business as "Cellular One."

least 28 rural service areas, directly or through partnerships in which it has an ownership interest.

11. The defendant Southwestern Bell Mobile Systems, Inc. is sometimes referred to herein as "the defendant," or "Cellular One."

#### IV. FACTS

##### A. The Contract

12. Cellular One sells cellular service pursuant to written "form" contracts which are drafted by the defendant. A copy of the contract between the plaintiff and the defendant ("the Contract") and an enlarged copy thereof, are attached hereto as Exhibit 1.

13. Under the Contract, defendant is allowed to charge its subscribers only for the time during which they make use of its services on calls originated by the subscriber's mobile unit.

14. Paragraph 13 of the Terms and Conditions of the Contract provides as follows:

13. Chargeable time for calls originated by a Mobile Subscriber Unit starts when the Mobile Subscriber Unit signals call initiation to C1's [Cellular One's] facilities and ends when the Mobile Subscriber Unit signals call disconnect to C1's facilities and the call disconnect signal has been confirmed. Chargeable time may include time for the cellular system to recognize that only one party has disconnected from the call, and may also include time to clear the channels in use.

15. The time described in paragraph 13 of the Contract, for which defendant may charge its subscribers, is hereinafter sometimes referred to as the "Chargeable Time."

B. The Defendant Overcharges For Cellular Service

The Defendant Charges For Calls Received By Its Cellular Customer's Cellular Phone

16. Neither paragraph 13, nor any other provision of the Contract, allows the defendant to charge the plaintiff for time in connection with calls received by the plaintiff's cellular phone.

17. By charging the plaintiff and the members of the class for time in connection with calls received by their cellular phones, defendant has breached and continues to breach the Contract.

The Defendant Rounds Up Time In Connection With Each  
Call To The Next Whole Minute

18. Paragraph 13 of the Contract allows the defendant to charge the plaintiff and the members of the class for calls originated by a Mobile Subscriber Unit only for the period from when "the Mobile Subscriber Unit signals call initiation to C1's facilities" to "when the Mobile Subscriber Unit signals disconnect to C1's facilities and the call disconnect signal has been confirmed."

19. Defendant has breached and continues to breach the contract by charging the plaintiff and the members of the class for the additional time resulting from the defendant's practice of rounding Chargeable Time actually used by the subscriber on each cellular telephone call, up to the next whole minute.

20. Except for the rare instances when a call uses Chargeable Time that is an exact number of minutes (and no seconds), the defendant, in assessing its charges, rounds up every call to the next whole minute. The defendant never rounds the Chargeable Time down to the next lower whole minute, but always rounds the time up to the next whole minute. Hence, all calls with Chargeable Time ending anywhere from one second to 59 seconds are rounded up to the next whole minute.

21. For example, if the Chargeable Time for a cellular telephone call was three minutes and 5 seconds, the defendant would actually charge the plaintiff and the members of the class for four minutes.

22. The plaintiff estimates that as a result of defendant's practice of rounding up the time of each telephone call to the next whole minute, the defendant overcharges the plaintiff and each member of the Class an average of 30 seconds for each call.

V. CLASS ACTION ALLEGATIONS

23. This action is brought by the plaintiff as a class action, pursuant to Rules 23(a), 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons and entities throughout the United States which purchased cellular service from the defendant Southwestern Bell Mobile Systems, Inc., pursuant to contracts similar to the plaintiff's Contract which:

a. provide for charges only for calls originated by the customer's cellular phone and not for calls received by the customer's cellular phone; and/or

b. contain a definition of Chargeable Time or a description or definition of the time for which a charge may be

made, which does not include time resulting from the rounding up to the next whole minute the time of each call; and

c. do not incorporate by reference or provide that they are governed by any tariff filed by the defendant with any governmental agency.

24. Excluded from the class are the defendant, and its affiliates, including any partnerships or other entities in which the defendant has an ownership or controlling interest or which holds a controlling interest in the defendant, including SBC Corporation, Inc., the officers and directors of the defendant and the defendant's affiliates, and members of their immediate families.

25. This action is properly brought as a class action because:

a. The members of the class are so numerous that joinder of all members is impracticable. As of the end of 1995, the defendant had approximately 3.6 million cellular customers, many of whom are members of the class. The class also includes some of the defendant's former cellular customers.

b. The plaintiff's claims are typical of the claims of the members of the class because plaintiff has been

overcharged by the defendant due to its practices of charging for calls received by her cellular phone and rounding up fractional minutes of cellular telephone calls to the next whole minute, in the same manner that all of the members of the class have been overcharged by those practices. The plaintiff and all members of the class sustained damages as a result of the defendant's wrongful conduct alleged herein.

c. The plaintiff is a proper class representative who will fully and adequately protect the interests of the members of the class. The plaintiff has retained competent counsel who have substantial experience and expertise in class action litigation. Plaintiff has no interest antagonistic with, contrary to, or in conflict with the members of the class she seeks to represent.

d. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because joinder of all members of the class is impracticable. The prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications concerning the subject of this action. Furthermore, as damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation may make it impossible for most members individually to redress the wrongs done to them. The likelihood of individual members of the class prosecuting separate claims is

therefore remote. No unusual difficulties are likely to be encountered in the management of this action as a class action.

e. The questions of law and fact common to members of the class predominate over any questions affecting any individual members, because the actions of the defendant complained of herein were generally applicable to and similarly affected the entire class.

26. Among the questions of law and fact involved herein which are common to the class and which predominate over any questions affecting individual members are:

a. whether the defendant charges for calls received by the cellular phones of the plaintiff and the members of the class;

b. whether the defendant rounds the time of each cellular call up to the next whole minute and charges for that increased time;

c. whether the defendant breached its contracts with the plaintiff and the members of the class;

d. whether the defendant violated Section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)).

e. whether the members of the class sustained damages by reason of the foregoing and, if so, the proper measure of those damages.

COUNT I

(For Breach of Contract)

27. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 26 above as if fully set forth herein.

28. The defendant sold cellular services to the plaintiff and the members of the class pursuant to the Terms and Conditions set forth in the written Contract between the defendant and each class member.

29. The defendant had a contractual duty to plaintiff and the class to charge them for cellular services only in accordance with the terms set forth in its contracts with the plaintiff and the members of the class, including but not limited to:

a. only charging them for time related to calls originated by their cellular phones (and hence not charging them for time related to calls received by their cellular phones); and

b. only charging them for Chargeable Time, as that term is defined in the Contract (and hence not rounding the time related to each call up to the next whole minute).

30. Defendant breached its contracts with the plaintiff and the members of the class by:

a. charging them for the time associated with calls received by their cellular telephones;

b. increasing the time of each call by rounding the Chargeable Time of each call up to the next whole minute, and charging the plaintiff and the members of the class for that increased amount of time.

31. As a result of defendant's breach of contract, the plaintiff and the members of the class have been damaged in an amount to be determined at trial.

32. By reason of the foregoing, defendant is liable to plaintiff and the members of the class for damages in an amount to be determined at trial.

COUNT II

(Violation of Section 201 (b) of the  
Communications Act of 1934 (47 U.S.C. § 201 (b))

33. The plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 32 above as if fully set forth herein.

34. The defendant, in providing cellular service for profit to the plaintiff and the class, is a provider of commercial mobile service as defined in Section 332(d)(1) of the Communications Act (47 U.S.C. § 332(d)(1)).

35. The defendant, as a person engaged in providing commercial mobile service, is treated as a common carrier for the purposes of Chapter 5 of Title 47, pursuant to Section 332(c)(1)(A) of the Communications Act (47 U.S.C. § 332(c)(1)(A)).

36. The defendant's conduct constitutes unjust practices in violation of Section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)).

37. As a result of defendant's violations of section 201 (b) of the Communications Act (47 U.S.C. § 201 (b)), the plaintiff and the members of the class have been damaged in an amount to be determined at trial.

38. By reason of the foregoing, defendant is liable to the plaintiff and the members of the class for damages pursuant to section 206 of the Communications Act (47 U.S.C. § 206) in an amount to be determined at trial.

COUNT III

(Violation of M.G.L. Ch. 93A, Section 2(a))

39. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 38 above as if fully set forth herein.

40. Defendant is engaged in trade and commerce, as that term is defined in M.G.L. Ch. 93A, Sec. 1(b).

41. The defendant's conduct constitutes willful and knowing unfair and deceptive trade practices in violation of M.G.L. Chapter 93A, § 2(a).

42. Pursuant to M.G.L. Chapter 93A, § 9(3), on July 18, 1996, plaintiff, through her counsel, wrote a letter to defendant on behalf of the plaintiff and the class, demanding relief from, and a cessation of its violations of, M.G.L. Chapter 93A, § 2(a). The defendant has failed to make a reasonable offer of settlement in response to that demand letter. The defendant's refusal to grant the plaintiff and the class reasonable relief was made in bad

faith, with knowledge or reason to know that the acts or practices complained of violated M.G.L. Ch. 93A, § 2(a).

43. As a result of defendant's violation of M.G.L. Chapter 93A, § 2(a), plaintiff and the members of the class have been damaged in an amount to be determined at trial.

44. By reason of the foregoing, defendant is liable to plaintiff and the class for damages in an amount to be determined at trial, tripled, plus her reasonable attorney's fees and costs.

WHEREFORE, the Plaintiff, on her own behalf and on behalf of the members of the Class, prays for judgment as follows:

A. Declaring this action to be a class action properly maintained pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure;

B. Declaring that pursuant to the contracts which the defendant has entered into with the plaintiff and the members of the class, the defendant may not:

i. charge the plaintiff and the members of the class for the time associated with calls received on their cellular phones; or